

MODIFIED

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JASON MATTHEW DOSS

Appellant

v.

CATHY LARAY BROWN;
GABRIELLE LEEAN DOSS;
STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICES,
FAMILY SUPPORT DIVISION

Respondent

Respondent

Respondent

DOCKET NUMBER WD74782

DATE: November 27, 2012

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Robert Michael Schieber, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Thomas H. Newton, J., and Charles E. Atwell, Sp. J.

Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JASON MATTHEW DOSS, Appellant, v. CATHY LARAY BROWN, Respondent;
GABRIELLE LEEAN DOSS, Respondent; STATE OF MISSOURI, DEPARTMENT OF
SOCIAL SERVICES, FAMILY SUPPORT DIVISION, Respondent

WD74782

Jackson County

Before Division Four Judges: Welsh, C.J., Newton, J., and Atwell, Sp. J.

Doss and Brown divorced in 2002. The dissolution decree granted Doss sole legal and physical custody of the parties' minor children (a son and two daughters). The decree ordered Brown to pay child support to Doss. Subsequently, the dissolution decree was modified several times. Doss relocated with the children to a different state. In 2009, Brown filed a motion to modify custody and child support. In response, Doss requested that the court deny her requests. Pursuant to section 210.854, Brown filed a motion for declaration of non-paternity as to one of the daughters and to set aside the judgment of child support against her.

A hearing was held at which Brown presented evidence. The court had previously found that Doss had violated discovery. As sanctions, the court struck Doss's pleadings and prevented him from presenting evidence. The trial court, *inter alia*, terminated Brown's child support obligation and ordered Doss to pay child support in the amount of \$1,001 per month. In ordering Doss to pay child support, the trial court imputed an income to Doss. It denied Brown's motion for declaration of non-paternity. Doss appeals.

AFFIRMED.

Division Four Holds:

In his first point, Doss challenges the denial of Brown's non-paternity motion under section 210.854. He claims that because proper genetic testing showed that the daughter was not his, the requested relief should have been granted. Section 210.854 addresses the injury of putative and presumed fathers paying child support for children who are in fact not their biological children. Brown, a biological parent, did not have standing to bring an action under section 210.854 to set aside child support. Because Brown did not have standing to bring an action under section 210.854, we need not address Doss's first point. Moreover, Doss did not raise the issues argued in this point to the trial court, so he is estopped from raising them here. Doss's point is denied.

In his second point, Doss challenges the sanctions entered against him. He claims that because he was not required to update his discovery and the court was deprived of necessary information to render its decision, the trial court should not have stricken his pleadings or rejected his evidence. According to Rule 61.01, sanctions may be awarded if "a party fails to answer interrogatories or file objections thereto within the time provided by law" or "fails to produce documents and tangible things as requested under Rule 58.01." The court has discretion to enter orders striking pleadings and preventing a party from presenting evidence. Doss's

behavior during discovery supports the trial court's action. We do not find an abuse of that discretion. Doss's second point is denied.

In his third and final point, Doss argues that the trial court erred in computing the child support award because the trial court did not have any evidence to support imputing \$5,000 as Doss's monthly income. A court in its discretion may impute income to a party in certain circumstances; the record must support the parent's capacity to earn that amount. Viewed in the light most favorable to the judgment, the evidence supports the imputation as Brown presented evidence of Doss's past income and earning capacity. Thus, the amount imputed and Doss's capacity to earn that amount is supported by the record. Doss's third point is denied.

Opinion by Thomas H. Newton, Judge

November 27, 2012

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